

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MELVIN STOHS,

Petitioner,

v.

JEFFERY UTTECHT,

Respondent.

Case No. C07-5319RJB

REPORT AND
RECOMMENDATION

**NOTED FOR:
October 26, 2007**

This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and Local Rules MJR 3 and 4. Respondent has filed a motion to dismiss in lieu of an answer and shows this petition to be several years time barred (Dkt. # 13). Petitioner has not responded to the motion.

The court recommends the petition be **DISMISSED WITH PREJUDICE AS TIME BARRED.**

PROCEDURAL FACTS

In 1989, Petitioner was convicted in Kitsap County of one count of aggravated first degree

1 murder. He was sentenced to life without the possibility of parole (Dkt. # 13, page 1). He filed a
2 direct appeal which was denied February 15, 1991, (Dkt. # 13, page 3). Petitioner moved for
3 discretionary review and review was denied June 4, 1991, (Dkt # 13, exhibit 5).

4 Just over fourteen years later, on January 20, 2006, petitioner filed a Personal Restraint
5 Petition. The Washington State Court of Appeals dismissed the petition as untimely on October 13,
6 2006, (Dtk # 13, Exhibit 9). A motion for discretionary review was denied January 10, 2007, (Dkt.
7 # 13, exhibit 11).

8 EVIDENTIARY HEARING

9 If a habeas applicant has failed to develop the factual basis for a claim in state court, an
10 evidentiary hearing may not be held unless (A) the claim relies on (1) a new rule of constitutional
11 law, made retroactive to cases on collateral review by the Supreme Court that was previously
12 unavailable, or there is (2) a factual predicate that could not have been previously discovered
13 through the exercise of due diligence; and (B) the facts underlying the claim would be sufficient to
14 establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder
15 would have found the applicant guilty of the underlying offense. 28 U.S.C. §2254(e)(2) (1996).
16 Petitioner's claims rely on established rules of constitutional law. Further, petitioner has not set
17 forth any factual basis for his claims that could not have been previously discovered by due
18 diligence. Finally, the facts underlying petitioner's claims are insufficient to establish that no rational
19 fact finder would have found him guilty of the crime. Therefore, petitioner is not entitled to an
20 evidentiary hearing.

21 STANDARD

22 Federal courts may intervene in the state judicial process only to correct wrongs of a
23 constitutional dimension. Engle v. Isaac, 456 U.S. 107 (1983). Section 2254 is explicit in that a
24 federal court may entertain an application for writ of habeas corpus “only on the ground that [the
25 petitioner] is in custody in violation of the constitution or law or treaties of the United States.” 28
26 U.S.C. § 2254(a)(1995). The Supreme Court has stated many times that federal habeas corpus
27 relief does not lie for errors of state law. Lewis v. Jeffers, 497 U.S. 764 (1990); Pulley v. Harris,

1 465 U.S. 37, 41 (1984); Estelle v. McGuire, 502 U.S. 62 (1991).

2 Further, a habeas corpus petition shall not be granted with respect to any claim adjudicated
 3 on the merits in the state courts unless the adjudication either (1) resulted in a decision that was
 4 contrary to, or involved an unreasonable application of, clearly established federal law, as
 5 determined by the Supreme Court; or (2) resulted in a decision that was based on an unreasonable
 6 determination of the facts in light of the evidence presented to the state courts. 28 U.S.C.
 7 §2254(d). A determination of a factual issue by a state court shall be presumed correct, and the
 8 applicant has the burden of rebutting the presumption of correctness by clear and convincing
 9 evidence. 28 U.S.C. §2254(e)(1).

10 DISCUSSION

11 One Year Statute of Limitations.

12 A one year statute of limitations was imposed under the 1996 amendments to 28 U.S.C. §
 13 2244(d), which were signed into law April 24, 1996 as part of the Antiterrorism and Effective Death
 14 Penalty Act (AEDPA). 28 U.S.C. § 2244(d) provides as follows:

- 15 (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus
 16 by a person in custody pursuant to the judgment of a State court. The limitation
 period shall run from the latest of-
 - 17 (A) the date on which the judgment became final by conclusion of direct review
 18 or the expiration of the time for seeking such review;
 - 19 (B) the date on which the impediment to filing an application created by State
 20 action in violation of the constitution or laws of the United States is
 removed, if the applicant was prevented from filing by such State action;
 - 21 (C) the date on which the factual predicate of the claim or claims presented could
 have been discovered through the exercise of due diligence.
- 22 (2) The time during which a properly filed application for State post-conviction or other
 23 collateral review with respect to the pertinent judgment or claim is pending shall not
 be counted toward any period of limitation under this subsection.

24 Petitioner was convicted before the 1996 amendments to 28 U.S.C. § 2244 (d). The one
 25 year time frame for filing a Federal Habeas Corpus petition in his case began April 24, 1996, and ran
 26 until April 25, 1997. Petitioner filed no challenge to his petition in state court during this time frame
 27 that would have tolled the running of the one year time frame. This petition is time barred and

1 should be **DISMISSED WITH PREJUDICE.**

2 CONCLUSION

3 This petition is time barred. Accordingly, the petition should be **DISMISSED WITH**
4 **PREJUDICE.**

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure,
6 the parties shall have ten (10) days from service of this Report to file written objections. *See also*
7 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes
8 of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
9 72(b), the clerk is directed to set the matter for consideration on **October 26, 2007**, as noted in the
10 caption.

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12 Dated this 1 day of October, 2007.

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14 /S/ J. Kelley Arnold
15 J. Kelley Arnold
16 United States Magistrate Judge
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